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31 January 2024

To the Committee Secretariat,

Re: Australian Naval Nuclear Power Safety Bill 2023 [Provisions] and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 [Provisions]

Thank you for the opportunity to submit to the Foreign Affairs, Defence and Trade (FADT) Committee inquiry into the Australian Naval Nuclear Power Safety Bill 2023 (Provisions) and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 (Provisions) (***the Bill***).

This submission is made on behalf of both Nuclear Free WA and Stop AUKUS WA. Nuclear Free WA is a registered charity formed in 2023 with over 80 members and thousands of supporters. The organisation is just the latest form of the strong and long standing anti nuclear movement in WA. Stop AUKUS WA is an organising collective made up of over a dozen organisations and community groups and more than 300 individuals.

Many of our members live in the local government areas of Rockingham (situated on the border of Whadjuk and Binjareb Noongar peoples territories), Kwinana, Cockburn and Fremantle which all face Cockburn Sound - the location of HMAS Stirling at Garden Island (one of the named “designated zones” in this Bill). Consequently they are directly and personally impacted by this proposed Bill.

Stop AUKUS WA and Nuclear Free WA both stand for a nuclear free Indo-Pacific, peace and for Australia to have an independent foreign policy. We are fundamentally opposed to AUKUS and the visitations, rotations, procurement and building of naval nuclear-propelled submarines in Australia. We are opposed to this proposed Bill.

We have engaged, and continue to do so, in policy discussions regarding AUKUS despite our strong opposition, in the interest of constructively advocating for stronger, clearer and more transparent laws. In the interest of public safety, governance and transparency we offer this submission to the Senate Committee inquiry.

The submission addresses concerns, suggested amendments and areas requiring further clarity alongside comments of some foundational issues with AUKUS, it is divided into the following topic areas:

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The Objectives of this Bill

It is our understanding that this Bill is intended to demonstrate Australia's 'nuclear stewardship', to show that Australia has the capability to ensure appropriate naval nuclear reactor safety measures, inspection procedures and management systems as required by the US prior to Congress approving the transfer of Naval Nuclear Propulsion (NNP) technology to Australia, including by way of the proposed procurement of the Virginia Class submarines in the 2030's.

In succumbing to the US prerequisite, this Bill threatens to split the regulation of nuclear safety in Australia between two different statutory agencies, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and the newly proposed Australian Naval Nuclear Power Safety (ANNPS) Regulator. Furthermore each would report to a different Minister/Ministry: The Minister of Health and the Minister of Defence respectively. Such a structure is fraught with difficulties and risks the AUKUS nuclear powered submarine program avoiding or overlooking important mechanisms for public health and safety assurance, transparency and accountability.

#6 We disagree with the assumptions of the stated objectives of this Bill.

(a) to promote the nuclear safety of activities relating to AUKUS submarines

Contrary to claims made by AUKUS partners that nuclear powered submarines are safe, a naval reactor is still a nuclear reactor. Accidents and reactor incidents do happen. When they do, it can be catastrophic in terms of public health and safety, the impact on fresh water and food supplies, as well as environmental devastation.

Cockburn Sound, the location of HMAS Stirling, is a popular recreational fishing and leisure boating area and has a pristine marine ecosystem. Any radiation fuel leakage from a nuclear-powered submarine ported at HMAS Stirling or traversing Cockburn Sound would have a devastating impact on the marine environment. It would also be disastrous for the wildlife and vegetation on the A-Class Reserve of Garden Island.

Recent reports of incidents involving nuclear powered submarines include:

- In 2022 a Royal Navy submarine was sent into an endless dive due to a gauge malfunction, risking the reactor safety and 140 crew being crushed by underwater pressure in.¹
- HMAS Astute ran aground off the Isle of Skye in 2010,²
- In 2006 Royal Navy investigators described a nuclear submarine incident off the UK coast that led to the death of 2 crew members stating the incident could have been a catastrophic disaster³
- Coolant water leakage from pipework in the reactor compartment of HMS Tireless in May 2000.⁴

It should be noted that there is an apparent lack of disclosure of official reports involving nuclear powered submarine accidents since 2015. Accidents happen despite all the best safety precautions. When accidents happen involving nuclear reactors and fuel the risks are catastrophic.

Even when accidents don't occur, nuclear reactors always produce nuclear waste. The safety issues of waste and decommissioning activities are also a major concern.

(b) to promote public confidence and trust in relation to the nuclear safety of Australia's nuclear-powered submarine enterprise

Since the initial AUKUS announcement there has been negligible opportunity for parliamentary or public debate about AUKUS. The mere 5 day time frame that was allowed for submissions to the JSCoT Inquiry into the Exchange of Naval Nuclear Propulsion Information Agreement (ENNPIA) in November 2021 was unacceptable.

To the public, details and implications remain shrouded in secrecy. A FOI request from Kellie Tranter for access to the actual signed AUKUS agreement was declined. Questions to authorities into the many different issues relating to AUKUS have either been ignored or addressed in a piecemeal way, avoiding scrutiny over the proposal in its entirety. Rather than making AUKUS more palatable to the Australian public this Bill is presented as a *fait accompli* with minimal effort to seek approval from the Australian public. Public confidence is greatly diminished by the lack of transparency and accountability in the Bill and without clear checks and balances on how the Government of the day makes decisions regarding AUKUS.

(c) to promote the defence and interests of Australia

¹ Jonathan Beale, The Guardian, 20 November 2023. Nuclear-armed submarine suffered malfunction
<https://www.bbc.com/news/uk-67473729>

² Dr Lynn Barnett Dip.Soc.Stud,M.Phil, Phd, MACP, FRAI, Ms Marion Birch BA, MSC, SRN, SRM, Director Medact, Dr Elizabeth Waterston MB, ChB, MRCP. Medact, June 2013. The Delusional Thinking Behind a Policy of 'Nuclear Deterrence'
<https://www.medact.org/wp-content/uploads/2014/02/The-Delusional-Thinking-behind-a-Policy-of-%E2%80%98Nuclear-Deterrence%E2%80%99.pdf>

³ *ibid*

⁴ International Atomic Energy Agency, 2001. Inventory of accidents and losses at sea involving radioactive material. https://www-pub.iaea.org/MTCD/Publications/PDF/te_1242_prn.pdf

Virginia Class submarines are attack class submarines meant for global deployment - not specifically suited for defence of Australia's shoreline. AUKUS will only facilitate Australian involvement in future wars instigated or provoked by the USA, which like so many wars involving Australia over the last 60 years, are unlikely to be in the best interests of Australia. Defence against who or what is yet to be defined and publicly debated.

We have seen in recent weeks the increasing pressure on Australia to join its AUKUS partners in targeting Yemen in response to the Houthi blockades in the Red Sea, and thus being drawn into the current Middle East conflict.

There are serious long term moral and financial questions about our close military ties with the US. Considering the cost to the Australian people, the increased global tensions generated by AUKUS, making us a more strategic military target for adversaries of the US and UK, the long term and intergenerational risks, costs and issues with radioactive waste management for a technology which may be redundant by the time we get those submarines it is hard to see how AUKUS serves our best interest.

(d) to support the AUKUS partnership

The objective to support the AUKUS partnership implies a return to, and renewed alignment with, the global imperialism of the Anglosphere. The AUKUS pact broadens the divide and escalates tensions with many important allies and trade partners, particularly in the Asia region.

Scope of Powers and Application

We are deeply concerned by provisions in the Bill which broaden the scope and the powers for the Minister and areas of land which may be co-opted as 'designated zones' under the Bill to be used for activities associated with AUKUS. The lack of definition or the description of any formal and public process for engagement on developments in new areas is troubling. Just as the decision to port UK, US and future Australian nuclear powered submarines at HMAS Stirling has been advanced without any formal process or engagement with the community in and around Cockburn Sound, including the relevant custodians and traditional owners. We cannot support a Bill that seeks to continue this type of development without public engagement with Traditional Owners, or any clear environmental assessment process..

There is a lack of clarity about the Bill's application to foreign partners of AUKUS, their submarines, respective military personnel and operations in Australia. The Bill makes no mention of the Interdepartmental Visiting Ships Panel (Nuclear) nor the Defence Operations Manual OPSMAN 1 - Visits To Australia By Nuclear Powered Warships⁵, updated as recently as Mid 2023.

⁵ Department of Defence, 2023. Defence Operations Manual (OPSMAN 1) Visits to Australia by Nuclear-Powered Warships. Edition 11. <https://www.arpana.gov.au/sites/default/files/documents/2023-07/>

Of note, the Bill omits any mention of the Force Posture Agreement (FPA)⁶ under which the US rotations of SRF-West are to occur as of 2027. Should HMAS Stirling be an “agreed facility and area” under the FPA, Clause 5 would impact on the safety and emergency response measures adopted by The Regulator: “The Parties shall mutually develop procedures to address incident and accident responses, including for the following matters: (a) first response; (b) the security of incident or accident sites and human remains; (c) investigations; and (d) public statements concerning accidents and incidents”.

Examples within the Bill that highlight the lack of detail and the broad scope include:

- **#10(1) “Regulated activities can only occur in a designated zone or in relation to an Australian submarine.”: #10(2-4)** This “definition” is made meaningless by including the phrase “any other area in Australia”.
- **#135** This Bill overrides any state laws, and presumably local council laws, further undermining local sovereignty.
- **#137** This Bill does not apply to foreign military but is unclear as to which other international agreement covers this.

Regulation, Transparency and Accountability

Part 4 is purely an in-house exercise as the Inspector reports to the Regulator and the Regulator is responsible just to the Minister of Defence. There is no option for truly independent inspection of breaches and accidents, that would be able to report its findings directly to the public.

Further, Part 4 only applies to Australian submarines and facilities, and does not seem to have any jurisdiction over breaches, accidents or incidents on visiting US and UK submarines.

Part 5 does not include requirements for the independence of the Regulator. It is commonly accepted that in order to ensure good governance, a regulator should be totally independent of any government department, relevant Industry or stakeholders. The importance of an operational and perceived independent regulatory authority has also been clearly emphasised by both the Radiation Health and Safety Advisory Council in its October 2022 letter of advice to the ARPANSA CEO, and by the IAEA.⁷

It is therefore unacceptable that under this Bill, the safety regulator of the most prized asset of the Defence Department, nuclear powered submarines, ultimately reports only to the Minister of Defence. MOU’s have been signed with Babcock and HII to assist with Australia’s nuclear stewardship and the sustainment and maintenance of Australia’s nuclear-powered submarines. Bechtel Australia and BAE Systems will also be major AUKUS stakeholders. Hence it appears several of the world’s largest defence

⁶ Department of Foreign Affairs and Trade, August 2014. The Force Posture Agreement between the Government of Australia and the Government of the United States of America.

<https://www.austlii.edu.au/au/other/dfat/treaties/ATS/2015/1.pdf>

⁷ International Atomic Energy Agency. Radiation Sources. <https://www.iaea.org/topics/radiation-sources>

contractors, who are either actual or prospective clients of the Australian Defence Department, would be in a position to liaise with and advise the Regulator.

This in-house regulation, removed from public scrutiny, is unsatisfactory for the following reasons:

- **#104** The Regulator has no obligation to civilian authorities, and just regulates within this act and replaces the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).
- **#105** Although the Regulator is supposed to be an independent authority the Defence Minister can instruct it “in the interests of national security and to deal with an emergency”, giving broad scope for ministerial control and undermining its independence
- **#107** Indicates that the Regulator, or the Bill itself, has no responsibility for accountability or reporting to the public, only the Defence Minister (**#122, 123**). This is most unsatisfactory in the case of a serious breach of protocol which could possibly threaten or affect public safety.
- **#121** Indicates immunity of members of the Regulator from public scrutiny, which is unsatisfactory in the case of enquiries as to how significant breaches affecting the public are handled.
- **#122, 123** Indicates no obligation for reporting to the public, only to the Minister.
- **#132** This clause removes the provisions of this Bill completely from civilian jurisdiction, through ARPANSA. There would be two separate, parallel means of overseeing radioactivity issues in Australia, which is totally unacceptable considering the inherent dangers of radioactivity.
- **#144** Such exemptions act to negate the aforementioned elaborate regulations.

Social Licence, Consultation and Assessments

Cockburn Sound and Garden Island have significant cultural value for First Nations Peoples. In the interests of transparency, we request the Committee to ascertain if the UN Declaration on the Rights of Indigenous People Articles 29 and 30⁸ have been effectively complied with prior to the drafting of this Bill (see further in Radioactive Waste).

Garden Island is an A-Class Reserve. It is a haven for birds, the protected tammar wallaby and snakes. The Department of Defence (DoD) has control of the whole island but HMAS Stirling naval base currently only occupies approximately 30%. Of particular concern to us is how far the boundaries of HMAS Stirling as a “designated zone” could be extended, to accommodate Low Level Waste (LLW) (or any other waste) storage. The ecological values of Garden Island, the proximity to Cockburn Sound make radioactive waste disposal here incompatible.

⁸ Article 30 UN Declaration on the Rights of Indigenous People

1. Military activities shall not take place in the lands or territories of Indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or request by the Indigenous peoples concerned.
2. States shall undertake effective consultations with the Indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Ongoing consultation and environmental assessment is also needed prior to determining further “designated zones” e.g. a dry dock maintenance facility either at the Australian Marine Complex in Henderson or as a floating dry dock in Cockburn Sound. The environmental, social and cultural values of this area cannot be underestimated. Processes for environmental assessment and public consultation are critical.

Radioactive Waste

The broad definition and scope of the Bill discussed above (Scope **#10(2-4)**) also leaves the way open for the Defence ministry to designate any area of their choosing to be a storage site for low level waste (LLW), intermediate level waste (ILW) or high level radioactive waste (HLW) derived from AUKUS, irrespective of the wishes of the inhabitants within or near that area or any clear process for assessment.

A publication by the Australian Submarine Agency⁹ reference the role of the Australian Radioactive Waste Agency within the Department of Industry Science and Resources in a site selection process. We caution that the DISR (and its many other forms over the last 5 decades) has failed to find a site for LLW and ILW. There have been multiple proposals for sites followed by court cases which have all ruled in favour of dissenting communities.

The idea that land not currently in the Defence Estate could be compulsorily acquired for the purpose of storing radioactive waste without any outline of process or consultation is deeply concerning, and would be out of step with public expectations and global standards on community consultation and Free Prior and Informed Consent.¹⁰

We are already seeing the unilateral decisions on waste being made. A case in point is the recent ASA FOI 011/23/24¹¹ revelation that “An operational waste storage facility for low-level radioactive waste management is being planned as part of the infrastructure works proposed for HMAS Stirling to support SRF-West.”

#12-15 These items refer to management, storage and disposal of radioactive waste emanating from AUKUS activities. The Bill requires further elaboration of the nature of that radioactivity, and the expected quantities of LLW, ILW and HLW. Further description of the intended storage facilities and type of disposal (e.g. temporary storage, permanent disposal) is required. It is understood that Australia would be required to eventually dispose of nuclear core HLW from their own submarines on their retirement. It needs to be realised that at present there is no permanent long-term storage facility for

⁹ Australian Submarine Agency, Nuclear stewardship and waste
<https://www.asa.gov.au/aucus/nuclear-stewardship-waste>

¹⁰ United Nations, Declaration on the Rights of Indigenous People - Article 29.
https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹¹ Radioactive Waste & Spent Nuclear Fuel, PDR No: SB23-000933000839. Document 1. ASA FOI 011/23/24/
Updated 25 October 2023. Supplementary Budget Estimate: October 2023.

HLW in the world¹². Australia has been unsuccessful in identifying a permanent storage facility for LLW and ILW for over 50 years. This Bill commits Australia to an intractable radioactive waste storage program with little definitive planning of how it is likely to be implemented (a problem for future generations?!).

Dr Ziggy Switkowski at a 2019 public hearing on nuclear power, made the important observation that *“No country has yet commissioned and completed a spent fuel or high-level nuclear waste facility. Australia has even struggled to get traction to build a small, low-level facility in Central Australia. The costs of spent fuel storage in reactor decommissioning may be high and may be a potential burden on future generations extending into the hundreds of years.”*¹³ There is a complete lack of scientific certainty about the management of radioactive waste, existing concepts are hypothetical.

In a previous submission our organisations made to the Foreign Affairs and Defence Committee we raised the issue that the proposal for Australia to own and operate nuclear submarines is inconsistent with the principles of the Environmental Protection and Biodiversity Conservation (EPBC) Act. The Act is founded on principles of intergenerational equity and the precautionary principle – which are fundamentally at odds with the management of Nuclear Waste. The EPBC Act also prohibits nuclear power.

Nuclear Submarines and Weapons Proliferation

Foreign Affairs Minister Penny Wong has stated that there is a “don’t ask, don’t tell”¹⁴ agreement with the US as to whether their military assets visiting Australia are carrying nuclear weapons or not. It would defy logic to think that US or UK nuclear submarines would offload their nuclear weapons before visiting Australia. Such “don’t ask don’t tell” or “neither confirm nor deny” positions are deeply deficient and provide no accountability, transparency or assurance to the Australian public that Australia will not facilitate the use or threat of nuclear weapons.

On the title page the proposed Bill includes the wording “... conventionally-armed, nuclear-powered submarines.” The Bill does not address measures to ensure that AUKUS nuclear powered submarines, which includes Australian, US and UK vessels (#7), will at all times be just “conventionally armed”, and not carrying nuclear weapons. There have been numerous assurances and there are some technical limitations, none of these offer the same certainty as a legislated commitment to not to carry nuclear weapons, or allow US or UK submarines to enter Australian water carrying nuclear weapons.

¹² We acknowledge that there is the construction of a HLW facility Onkalo in Finland. This is a world first - and it is yet to be tried and tested. It is expected to be a deep geological tomb that no-one shall enter for 100,000 years. The most recent cost estimate was over €1bn. It is expected to begin accepting waste in 2025. It will only take waste from Finland. There are no other projects of this scale anywhere in the world, despite the mounting stockpile of high level nuclear waste - an ongoing weapons proliferation risk.

¹³ Zali Steggal. Nuclear Energy Dissenting Report, December 2019.
https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/EnvironmentEnergy/Nuclear_energy/Independent_dissenting_report.pdf?la=en&hash=3182CEAF798CFE1BDE95EC3F8E5D372DE8ED8CEE

¹⁴ Andrew Greene, ABC, 15 Feb 2023. Officials will not confirm whether US bombers in Australia carry nuclear weapons
<https://www.abc.net.au/news/2023-02-15/defence-wont-confirm-if-us-bombers-carry-nuclear-weapons/101978596>

AUKUS Pillar 1 undermines the Nuclear Non-Proliferation Treaty in that it transfers nuclear technology (to Australia - a non-nuclear state) which will include the production of nuclear waste that could be reprocessed and diverted into a nuclear weapons program. Australia does not have a reprocessing facility but there is no explicit commitment to prohibit the construction of a reprocessing facility. Such an explicit prohibition should be made.

The reactors of the nuclear powered submarines currently under the purview of this Bill rely on Highly Enriched Uranium (HEU) which has the potential to be diverted to a nuclear weapons programme.

An article by Dr Alan J. Kuperman Associate Professor and Coordinator of the Nuclear Proliferation Prevention Project explains that "Since the 1970s, the non-proliferation regime has banned HEU fuel in the new reactors of countries like Australia that have pledged under the Nuclear Non-Proliferation Treaty to eschew nuclear weapons. The regime went so far as to convert 71 old reactors from HEU fuel to low-enriched uranium (LEU) fuel, to eliminate the proliferation risk. Indeed, HEU minimisation is deemed so vital for non-proliferation that it has been applied even to tiny reactors containing only one kilogram of weapons-grade uranium. Now Australia intends to eviscerate that non-proliferation norm by fuelling each SSN-AUKUS with hundreds of kilos of such bomb-grade uranium."¹⁵

This Bill should clearly prohibit the use of Highly Enriched Uranium in any Australian owned submarine in line with the obligations under the Nuclear Non-Proliferation Treaty.

#133 How can this act be consistent with the Nuclear Non-proliferation Treaty (NPT)? The possibility of nuclear armed submarines in Australian ports and the various loopholes in this Bill around nuclear safety would breach the NPT. Australia's nuclear submarines are supposed to be interoperable with those of its AUKUS partners, the US and UK. It is understood that the US, at least, is increasing its nuclear weapons capability, in breach of the NPT. Thus Australia would breach the NPT by association.

Other Safety Risks

The presence of AUKUS submarines at HMAS Stirling Naval base, Garden Island, WA makes that region a prime target in the event of regional hostilities involving the US. Curtin University Dean of Global Futures, Professor Joe Siracusa claimed in a recent interview on Sky News¹⁶ that Perth is increasingly a military target because of AUKUS. He said (in reference to Russia and China) "*They see the AUKUS development here, not only nuclear-propelled submarines, but they're going to have nuclear cruise missile type things here.*"

¹⁵ Dr Alan J. Kuperman, [The Australian Institute of Public Affairs](#), 16 NOV 2023. "AUKUS Submarine Revelations Compel a Rethink."

¹⁶ Sky News Australia, 16 January 2024. Perth could be an 'especially important target' due to AUKUS <https://www.msn.com/en-au/news/other/perth-could-be-an-especially-important-target-due-to-aukus/ar-AA1mQKU?>

Summary of Concerns and Recommendations

1. Several provisions of the Bill seek to override, or gain exemption from, existing local and national regulations, e.g. apparent flexibility of “designated zones”, nuclear regulation separate from ARPANSA, compliance of porting US and UK nuclear submarines, etc. We suggest the Bill be made more compatible with existing regulations and not seek to override them.
2. In view of Australia’s signing of the NPT, and various Australian jurisdictions having nuclear free policies, the Bill is unclear as to how these policies and positions may be overridden with regard to the potential of US and UK nuclear submarines carrying nuclear weapons and porting in Australia. It is also unclear as to how the Bill would prevent “conventionally-armed” from being converted into “nuclear-armed”, if Australia is to remain having the only “conventionally-armed” nuclear powered submarines among nations with nuclear powered submarines. The Bill needs to clarify in detail how Australia would remain free of nuclear weapons, especially in view of the Labor Government’s stated intention to sign the Treaty on the Prohibition of Nuclear Weapons (TPNW).
3. The Bill is unclear as to which public consultation and environmental assessments are to be undertaken in regards to intended waste storage; to what extent LLW, ILW or HLW is planned to be stored at HMAS Stirling, or elsewhere in Australia, and; given the direct implications on safety and radiation regulation, the Bill also needs to clearly identify the currently agreed arrangements in regard to the US and UK submarine waste.
4. Current model US and UK nuclear powered submarines (SSNs) use HEU which can be used directly for nuclear weapons. Lower levels of enriched uranium can be reprocessed. The Bill needs to rule out acceptance of nuclear waste from US and UK nuclear powered submarines and explicitly state that spent fuel from AUKUS vessels stored in Australia will not be used or repossessed for manufacture of nuclear weapons, in Australia or elsewhere.
5. The Bill needs to clearly articulate which clauses apply to foreign submarines and their respective military personnel; any other substituting agreements which cover exemptions under ‘sovereign immunity’ and; the implications of the FPA with the US, including if HMAS Stirling is an agreed “facility and area”.
6. The main purpose of this proposed Bill is to ensure radiation protection and nuclear safety for the Australian people and environment in regards to naval nuclear reactors. It hence defies logic to set up a totally separate regulating agency to ARPANSA and treat this issue as more of a defence rather than safety and public health concern. We request that reconsideration be given to the Regulator being an extended ‘arm’ of ARPANSA which also enables collaboration between the respective Ministers of Health and Defence. This would also serve to minimise duplication, draw on existing expertise within ARPANSA, add a layer of transparency and accountability as well as instil more public confidence and trust.

7. Both the AUKUS Pact and the development of this Bill have proceeded without grass roots community consultation. This is especially unacceptable in the regions to be most directly impacted. It is therefore requested a public hearing (or as a minimum, a Hearing as part of the Committee's Inquiry into this Bill) be held in both SA and in WA The WA Hearing should be held on the mainland opposite HMAS Stirling and specifically aim to include the participation of the Whadjuk and Binjareb Noongar Peoples.

For any clarification or questions please contact.

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